UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re: MANCHESTER OAKS HOMEOWNERS ASSOCIATION, INC., Debtor.	)	Case No. 11-10179-SSM Chapter 11
PATRICK K. BATT, RUDOLPH J. GROM, AND JAMES R. MARTIN, JR., Movants, v. MANCHESTER OAKS HOMEOWNERS ASSOCIATION, INC., Respondent.	)	

MEMORANDUM OF DEBTOR IN OPPOSITION
TO MOTION FOR RELIEF FROM STAY

The Debtor, MANCHESTER OAKS HOMEOWNERS ASSOCIATION, INC., through counsel, submits this, its Memorandum in Opposition to Motion for Relief from Stay of Patrick K. Batt, Randolph J. Grom, and James R. Martin Jr. (hereinafter collectively "Movants").

INTRODUCTION

The underlying dispute between the Debtor and Movants involves the entitlement of Movants to use parking spaces in a small townhouse development in Fairfax County where they reside. The issue simply stated is that the original builder built 57 townhouse units, 30 of them with garages and 27 without. For more than 20 years the builder's parking plan had been accepted by the homeowners. Two parking places were allocated to those units that had garages on their property (one space in the garage and one on the driveway). The other 27 units, which did not have garages, were allocated two reserved spaces in the outside parking area. The Movants are owners of garage units who sought unlimited access to the outside parking area that had been allocated to the non-garage units. There are 27 garage unit owners who are situated similarly to the Movants, and those owners have similar potential claims against the Debtor. Resolving the dispute presently at issue required a full trial in the Circuit Court of Fairfax County consuming five trial days. The state court judge found damages collectively in the amount of $57,177.50, or substantially less than the minimum jurisdictional amount required for a diversity case in federal court. However, on the date of filing the petition a judgment order had not been entered. The court was awaiting a final hearing on Movants claim for attorney's fees in that matter. Movants were seeking fees in the range of $200,000, or more than three times the amount of the recovery.

The sole significant source of income for the Debtor, a small homeowners association, is fees by paid by the homeowners (presumably including the Movants, who still reside in the development). The Debtor owns the streets and common areas in the project, but little else. No plan of reorganization has yet been proposed. It is highly unlikely that a confirmable plan can be proposed to liquidate all of the outstanding indebtedness within the term of the plan, if the Movants' claim for attorney's fees is allowed by the state court (assuming the Court grants the requested relief from the stay). The Debtor would be facing an uphill struggle to craft a confirmable plan, even without the claim of Movants for attorney's fees. In practical effect, upon a judgment for the attorney fees sought, the Debtor will be indentured indefinitely to the Movants' lawyers.

This does not even begin to address the issues that arise in this case because of the findings of the state court. If the court’s findings are ultimately upheld, the other 27 homeowners in the project who are similarly situated to the Movants would fairly be entitled to a similar award, raising the potential damage awards (not including attorney fees) against the Debtor to substantially more than $500,000.00, imposing a burden that makes little sense forcing the homeowners in this small community to pay each other's awards.

It is the hope of the Debtor that this court will apply some common sense and stop Movants race to the courthouse to award the full value of the Debtor's income and assets to the Movants over a parking dispute.

ARGUMENT

In their motion Movants rely almost exclusively on *In re Robbins*, 964 F.2d 342 (4th Cir. 1992). That reliance is misplaced for several reasons. In the first place, that case involved a domestic relations dispute, a subject area from which the bankruptcy courts properly steer clear. *Id.* at 345 ("[D]omestic matters, which include equitable distributions, are primarily for the state courts to decide"). The cases following *Robbins* have typically arisen in the domestic relations context or in some other context where the state courts possess a special expertise. *See In re Roberge*, 188 B.R. 366 (E.D. Va. 1995); *In re Ackerman*, 194 B.R. 404 (Bankr. D.S.C. 1996); *In re Takacs*, No. 08-14183-SSM, 2008 WL 4401395 (Bankr. E.D. Va. Sept. 19, 2008); *In re Patterson*, No. 00-310575, 2000 WL 34532242, at *1 (Bankr. E.D. Va. Aug. 30, 2000) ("[T]he court concludes that the state court has a special expertise in determining property rights and interests and that judicial economy would be increased by allowing a state court to exercise its expertise in this area. Finally, lifting the stay will not harm the other creditors under the facts presented."). Determining whether to award attorney's fees and the amount thereof is obviously a matter with which this Court is fully conversant.

Moreover, lifting the stay will do great harm to the estate and the other homeowners in the project who potentially would have identical claims. Judge Nordlund has given every indication that she intends to award Movants substantially all of their fee request. The effect of that fee award alone will be to torpedo any ability of the Debtor to devise a confirmable plan, leaving it no alternative but to seek relief under Chapter 7. Then none of the unsecured creditors get paid, since there is so little in the way of estate assets to pay the claims of creditors, particularly the massive claim for attorney's fees for these Movants. At a minimum, granting the Movants relief from the stay when the Debtor has yet to propose a plan of reorganization, or for counsel even to assess the state court litigation, is premature.

Because awards of attorney's fees, except in certain defined circumstances, are dischargeable, courts hold that the stay should remain in place with respect to a claim for attorney's fees.

> Although it is contained in the same document, the prepetition judgment provides for a separate judgment, in favor of Polstein, Ferrara & Dwyer, P.C., for legal fees in the amount of $3,850. Debtor argues, with considerable weight, that the legal fees judgment is dischargeable and should remain subject to the stay. He is correct. Indeed, Polstein, Ferrara & Dwyer, P.C. does not even allege a prima facie case for nondischargeability. As to that debt, the stay remains in place.

In re Newman, 196 B.R. 700, 705 (Bankr. S.D.N.Y. 1996). Although the procedural posture of that case is different from this case, nonetheless the reasoning remains compelling that issues related to an award of attorney's fees to the debtor should remain in this Court.

This case is readily distinguishable from cases like *In re Hudgins*, 102 B.R. 495 (Bankr. E.D. Va. 1989), cited by Movants, where the movant sought relief from stay to liquidate a tort claim. After the jurisdictional amendments affecting the Bankruptcy Code, the Court has no practical alternative to lifting the stay in a similar kind of case, since the Court, unlike a state court, cannot conduct a jury trial to liquidate a tort claim. Here, the matter of an attorney's fee award is determined by the court, either the state court or this Court. The case-in-chief has already been tried.

Returning to the *Robbins* factors, on balance they do not support awarding relief from the stay. While the Debtor agrees with Movants that the merits of the fee claim implicate only state law, the amount of the fee award has a substantial effect on the other unsecured creditors and the ability of the Debtor to propose a confirmable plan, which is a bankruptcy issue exclusively. Forcing the Debtor into liquidation would have a substantial impact on other homeowners who are not parties to this bankruptcy proceeding. Those homeowners depend on their association to provide essential services, an ability that will be placed at risk if the Debtor's liabilities are increased by almost 500% by virtue of the potential fee award. In practical effect, the claims of Movants will be paid by the other homeowners, who had no part in the dispute that gave rise to the claim of the Movants in the first place, half of whom have similar claims and should be entitled to share in any claim for an award.

Contrary to the Movants' argument, there is no need for this Court to relitigate the merits of the underlying claim in dispute. The issues have been tried, judgement was not entered only because the court had not determined the outstanding claim for attorney's fees. This court can take notice of the court file in the state case. *In re Circuit City Stores*, 439 B.R. 652, 659 (E.D. Va. 2010) ("[A] bankruptcy court 'may take judicial notice of the contents of the docket and pleadings' in its territorial jurisdiction." (quoting *Rutland v. Burkeholder*, No. 8:09-2476, 2009 WL 3681885, at *1 n.2 (D.S.C. Oct. 1, 2009))); *see* Fed. R. Evid. 201(b), (c). There is no need for the Court to retry the case.

Unfortunately, it is entirely possible that the other 27 townhouse owners which are similarly situated could bring claims which, if successful, would expose the Debtor to substantial additional liability. The Movants, as owners, should be exposed to their pro rata share of that potential liability. All those potential claims, as well as the present claims and the claims for attorney's fees, should be resolved in this Court because they involve similar issues and because the viability of the estate obviously is implicated. Only this court can efficiently resolve these claims at comparatively little cost and to take into fair consideration the assets available to pay them. The rights of those absent homeowners must be taken into account, and that can occur only in this Court, where all interested parties have an opportunity to be heard.

Judge Nordlund set out her reasoning on the awarding of attorney's fees in the transcript of the hearing conducted on November 18, 2010. (R. Doc. 10-1 at 49-51.) Some testimony was received at the hearing held on December 21, 2010, on the issue of attorney's fees. (R. Doc. 10-2.) Judge Nordlund had earlier concluded that under state law, Movants were entitled to an award of fees as the prevailing party as a matter of right. *See* Va. Code Ann. § 55-515(A) ("The prevailing party shall be entitled to recover reasonable attorneys' fees and costs expended in the matter."). All that remains is to determine the reasonableness of the amount of the award, if an award of fees is to be made. This Court is fully competent to make that determination.[1] Moreover, this Court should make that decision where the viability of the estate is at risk and the true value and benefit of those fees can be determined.

In another case, where the potential fee award was not so far out of bounds with respect to the nature and size of the underlying claim, the Movants' argument would have more plausibility. But this is a case that has gotten out of control.

> Lawyers are highly trained professionals and are expected to exercise professional judgment. They are not expected to follow-up every random

[1] Judge Nordlund also has taken the extraordinary step of communicating directly with this Court by letter dated January 20, 2001, to which the Debtor takes the strongest exception. By that letter she has sought to influence the outcome of these proceedings, which brings in question her partiality in this matter.

> thought that pops into their heads. And when they do, billing judgment dictates that it not be billed.
>
> The time records reflect that Mr. Range and Mr. Ashby made a mountain out of molehill. They turned over every stone they could find. They fully vetted every idea. They re-created the credit union's six accounts. This was a basic case that got out of control.

In re Jackson, No. 08-11179-SSM, 2010 WL 2836161, at *7 (Bankr. E.D. Va. July 16, 2010).

Much the same could be said of a dispute over parking spaces that has generated $200,000 in attorney's fees. The case is clearly now more about attorney's fees than it is about the clients' recovery. The underlying litigation was contentious, to be sure, but that is beside the point now. The case is over. The primary concern of this Court is the viability of the estate and whether the ability of the Debtor to devise a confirmable plan will be so compromised by the attorney fee award that the only feasible alternative is liquidation. If the issue remains in this Court, Movants will be encouraged to compromise and settle their claim so that a plan of reorganization can be confirmed.

> In a reorganization under Chapter 11 of the Bankruptcy Code, a debtor's creditors often contract away in the reorganization plan rights that their state law would otherwise have given them, in order to secure payments from the reorganized debtor that equal or exceed the amounts those creditors would otherwise receive if a debtor were forced to liquidate to pay their claims. The Bankruptcy Code permits and encourages holders of claims to reach a negotiated settlement of their respective positions under a plan of reorganization and allows the court to confirm a negotiated plan.

In re A.H. Robins Co., 216 B.R. 175, 179 (E.D. Va. 1997).

There is no risk of inconsistent results if the stay is not modified, as Movants have argued. On the contrary, outside of the protection of this court, the contrary is true. Neither party expects the Court to relitigate the underlying state law claim on the merits. All that remains is for the attorney's fee claim to be liquidated, and there is no reason to rush to do it. That action can be done by this court without relitigating the merits. This court should determine the attorney's fee award (if any), rather than the state court, because this court is obliged to take into account the best interests of the estate, while the state court is under no such obligation. It makes sense, therefore, for this court to undertake the task of determining the fee award. The award largely will decide whether the Debtor has a realistic prospect for a successful reorganization.

The representation by the Movants that they do not intend to seek enforcement of their judgment outside bankruptcy is no promise at all. Their claim is unsecured, so they have no choice but to cast their fortune in this bankruptcy proceeding. Their argument that liquidating the fee award in state court will assist the Debtor in devising a confirmable plan carries no weight. If the award of fees by the state court is, as expected, for the full amount of the claim, the Debtor will have little choice but to liquidate. The Debtor's income is, for all practical purposes, fixed. There is no realistic possibility that any plan can be devised that will pay the damage award, plus an award of $200,000 in attorney's fees, and the debtors other unsecured creditors. It will be a stretch for the Debtor to satisfy the claim for compensatory damages under the best of circumstances, but the Debtor's finances cannot withstand an increase of nearly 500% in its liabilities and expect to survive as a reorganized entity.

Accordingly, the motion for relief from stay should be denied. As a practical matter, the only means to obtain a review of the state court's allowance of fees may be in this court. Review by way of certiorari or appeal in civil matters is rarely granted in Virginia, so there is only a small chance the state court proceedings will be reviewed on appeal, and even if it were, the standard for review of attorney fees is high. *Fisher v. Salute*, 51 Va. App. 293, 657 S.E.2d 169, 175 (2008) ("Fisher's request that the trial court's award of attorney's fees be reversed is denied. 'An award of attorney's fees is a matter submitted to the trial court's sound discretion and is reviewable on appeal only for an abuse of discretion.' *Graves v. Graves*, 4 Va. App. 326, 357 S.E.2d 554, 558 (1987)."). In any case, at this time this Debtor clearly needs the protection of the automatic stay to obtain a sane resolution to this small dispute which has gotten out of control and which imperils the survival of both the Debtor and the property rights of its 57 homeowners.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing memorandum was served this 28th day of January, 2011, on counsel through the Court's automated filing system and by sending a copy by regular mail, first-class postage prepaid, to the following:

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